

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Samuel Ross	Team: Squad #1	CCRB Case #: 201706037	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 07/15/2017 6:10 PM	Location of Incident: Front of § 87(2)(b)	Precinct: 79	18 Mo. SOL 1/15/2019	EO SOL 1/15/2019	
Date/Time CV Reported Sat, 07/15/2017 6:33 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 07/24/2017 2:45 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POF Lena Hanafi	09136	955972	079 PCT
2. SGT Joseph Kosek	01427	949175	079 PCT
3. POF Sonya Senra	14981	956253	079 PCT
4. POM Dominique Garrett	06374	958615	079 PCT
5. POM Christophe Schiro	15133	956244	079 PCT
6. POF An officer			079 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Sonya Senra	Abuse: Police Officer Sonya Senra frisked § 87(2)(b)	§ 87(2)(b)
B.POF Sonya Senra	Abuse: Police Officer Sonya Senra searched § 87(2)(b)	§ 87(2)(b)
C.POF Sonya Senra	Off. Language: Police Officer Sonya Senra made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	§ 87(2)(b)
D.SGT Joseph Kosek	Abuse: Sergeant Joseph Kosek frisked § 87(2)(b)	§ 87(2)(b)
E.SGT Joseph Kosek	Abuse: Sergeant Joseph Kosek searched § 87(2)(b)	§ 87(2)(b)
F.SGT Joseph Kosek	Abuse: Sergeant Joseph Kosek searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
G.POF An officer	Abuse: An officer deleted information from § 87(2)(b)'s electronic device	§ 87(2)(b)
H.POF An officer	Abuse: An officer damaged § 87(2)(b)'s property.	§ 87(2)(b)
I.POF Sonya Senra	Discourtesy: Police Officer Sonya Senra spoke discourteously about § 87(2)(b)	§ 87(2)(b)
J.SGT Joseph Kosek	Abuse: Sgt. Joseph Kosek threatened to report § 87(2)(b) to his military supervisor.	§ 87(2)(b)
K.POF Lena Hanafi	Abuse: Police Officer Lena Hanafi refused to provide her name to § 87(2)(b)	§ 87(2)(b)
L.POM Dominique Garrett	Abuse: Police Officer Dominique Garrett refused to provide his name to § 87(2)(b)	§ 87(2)(b)
M.POM Christophe Schiro	Abuse: Police Officer Christopher Schiro refused to provide his name to § 87(2)(b)	§ 87(2)(b)

## Case Summary

§ 87(2)(b) filed this complaint with the CCRB via telephone on July 15, 2017. On July 15, 2017, at approximately 6:10 PM, Sgt. Joseph Kosek, PO Sonya Senra, and PO Lena Hanafi of the 79<sup>th</sup> Precinct stopped § 87(2)(b)'s illegally double-parked vehicle, which was also parked at a hydrant, in front of § 87(2)(b) in Brooklyn. In the vehicle were § 87(2)(b) and § 87(2)(b). PO Senra ordered § 87(2)(b) from the vehicle. She then frisked and searched him (**Allegations A and B**). When § 87(2)(b) complained that PO Senra made contact with his groin, PO Senra allegedly said, "Nobody wants to touch that little piece of shit anyway" (**Allegation C**). § 87(2)(b) exited the vehicle, at which time Sgt. Kosek allegedly frisked and searched him (**Allegations D and E**). § 87(2)(b) and § 87(2)(b) were brought to the rear of the vehicle. Sgt. Kosek then allegedly searched the vehicle (**Allegation F**). While the officers searched the vehicle, an officer allegedly deleted a video of the incident from § 87(2)(b)'s cell phone (**Allegation G**) and allegedly damaged § 87(2)(b)'s vehicle (**Allegation H**). Meanwhile, at the rear of the vehicle, PO Senra referred to § 87(2)(b) twice as "stupid" (**Allegation I**). Subsequently, Sgt. Kosek allegedly threatened to report § 87(2)(b) to his military supervisor (**Allegation J**). PO Dominique Garrett and PO Christopher Schiro of the 79<sup>th</sup> Precinct responded as backup. Before the officers departed, § 87(2)(b) asked PO Hanafi, PO Garrett, and PO Schiro for their names. All three officers allegedly refused (**Allegations K, L and M**). § 87(2)(b) and § 87(2)(b) were each issued summonses for § 87(2)(b).

§ 87(2)(b) recorded cell phone video footage (Board Review 01 for video; Board Review 02 for transcript). The full video (3 minutes 44 seconds) is linked to IA #19 of the digital case file.

This case was delayed approximately three weeks because of contact attempts to § 87(2)(b). Further, the case was delayed two weeks because Sgt. Kosek missed two scheduled interviews.

## Mediation, Civil and Criminal Histories

- § 87(2)(b) chose to have his case investigated rather than mediated § 87(2)(b).
- On October 31, 2017, an online FOIL request was submitted to the Office of the Comptroller for any notice of claim filed in regards to this incident. As of the writing of this report no response has yet been received.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

## Civilian and Officer CCRB Histories

- This is the first CCRB case involving § 87(2)(b) (Board Review 03) or § 87(2)(b) (Board Review 04).
- Sgt. Kosek, who has been a member of the NYPD for seven years, has been a subject in three previous CCRB complaints (Board Review 05). His history reveals § 87(2)(g) no allegations made against him have been substantiated.
- PO Senra, who has been a member of the NYPD for three years, has been a subject in four other CCRB complaints (Board Review 06). In Case #201702680 it was alleged that

PO Senra stopped a vehicle, frisked an individual, and searched an individual. The first two allegations were exonerated and the last was unsubstantiated. In Case #20170444 it was alleged that PO Senra searched and deleted information from an electronic recording device. That case was truncated. No allegations against her have been substantiated.

- PO Hanafi, who has been a member of the NYPD for three years, has been a subject in one previous CCRB complaint (Board Review 07). In Case #201702680 it was alleged that PO Hanafi stopped a vehicle. That allegation was exonerated. No allegations made against her have been substantiated.
- This is the first CCRB complaint involving PO Garrett, who has been a member of the NYPD for two years (Board Review 08).
- This is the first CCRB complaint involving PO Schiro, who has been a member of the NYPD for three years (Board Review 09).

### **Potential Issues**

- § 87(2)(b) provided a phone statement on September 7, 2017 (Board Review 09). However, he did not cooperate or provide a verified statement to the investigation.

### **Findings and Recommendations**

#### **Allegations Not Pleaded:**

- § 87(2)(g) [REDACTED]
- § 87(2)(g) [REDACTED]

#### **Allegation A—Abuse of Authority: Police Officer Sonya Senra frisked § 87(2)(b)**

§ 87(2)(b) (Board Review 11) stated that as PO Senra approached his vehicle, he rolled the front driver-side window up. He acknowledged that the vehicle had tinted windows. He stated that, after he exited the vehicle at PO Senra's instruction, PO Senra patted him down from his hips to his ankles on both legs, and then from his ankles to his groin.

PO Senra (Board Review 13) stated that she was concerned for her own and her partners' safety when § 87(2)(b) rolled his window up because the window was tinted darkly and she could not see inside of the vehicle and she did not know what he might be doing. She did not know if, for example, he had a weapon. § 87(2)(b) then began to fidget. PO Senra had difficulty describing § 87(2)(b)'s specific motions, as she did not recall them clearly, but she recalled that § 87(2)(b)'s movements made her nervous. PO Senra asked § 87(2)(b) to exit the vehicle due to his movements and uncooperative behavior. However, he did not exit the vehicle until after her third request.

After exiting the vehicle, § 87(2)(b) continued to move nervously. He covered his pants pockets with his hands. PO Senra believed that this indicated that he might be attempting to obscure the

shape of some object or objects in his pocket. Due to § 87(2)(b)'s uncooperative behavior and suspicious movements, PO Senra patted § 87(2)(b) down in order to determine whether or not he was carrying any weapon. She patted down his waistband, rear pockets, legs, and ankles.

Sgt. Kosek (Board Review 12) and PO Hanafi (Board Review 14) also testified that, § 87(2)(b) moved around on his seat and rolled up his window as PO Senra approached, and that this made them both suspicious and nervous. Sgt. Kosek also added that § 87(2)(b) too, moved around inside of the vehicle, shifting his weight back and forth on the seat. Neither Sgt. Kosek nor PO Hanafi knew whether PO Senra frisked § 87(2)(b). Sgt. Kosek, for his part, noted in his memo book (Board Review 15), "Both males very uncooperative during stop."

The following portion of § 87(2)(b)'s video is relevant to the analysis of the allegation at hand (Board Review 01 for video; Board Review 02 for transcript):



2017-11-01\_11-07-49.mp4

Video Clip #1 - 1 minute, 10 seconds

Video Clip #1, above, does not show § 87(2)(b)'s behavior as the officers approach. The video reveals that PO Senra asks § 87(2)(b) "Why would you close the window like that?" Subsequently, PO Senra asks § 87(2)(b) at least nine times to exit the vehicle. § 87(2)(b) turns his body back and forth despite Sgt. Kosek's requests that he remain still. Just before the camera pans to § 87(2)(b) again, § 87(2)(b) asks, "You're patting me down for what?" PO Senra removes keys from § 87(2)(b)'s left pants pocket. She then reaches into § 87(2)(b)'s right pants pocket (addressed below in the analysis of Allegation B) before continuing to frisk § 87(2)(b).

The video shows PO Senra reaching into § 87(2)(b)'s pockets before she is shown frisking him. However, PO Senra testified that she began frisking § 87(2)(b) before the camera panned left. She was confident of this because, according to her, she always begins frisks with the waistband, and a frisk of the waistband is not captured on video. As noted, before the camera shows PO Senra reaching into § 87(2)(b)'s pockets, § 87(2)(b) is heard asking, "You're patting me down for what?" Therefore, the investigation credits PO Senra's testimony that she began to frisk § 87(2)(b) before the video showed her reaching into his pockets.

In *People v. King* 65 N.Y.2d 702 (Board Review 16), an officer observed an individual committing a violation, a relatively minor offense in response to which a frisk would not usually be permissible. In that case, the violation was gambling. However, in *King*, the defendant fled to a nearby store and refused to exit despite the officer's verbal command. The defendant's uncooperative and suspicious behavior elevated the nature of the incident and provided the officers with legal justification to perform a frisk for weapons, in order to ensure their safety.

§ 87(2)(b) admitted, and the video confirms, that he rolled up the driver-side window as PO Senra approached and that the vehicle's windows were tinted, making it difficult for PO Senra to see what § 87(2)(b) might be doing inside of the vehicle. The video also reveals that § 87(2)(b) refused to exit the vehicle until after PO Senra ordered him to do so at least nine times. Lastly, while the

video is inconclusive as to whether or not § 87(2)(b) moved around inside of the vehicle, the video reveals that § 87(2)(b) did so despite Sgt. Kosek's commands that he remain still.

§ 87(2)(g)

**Allegation B—Abuse of Authority: Police Officer Sonya Senra searched § 87(2)(b)**

§ 87(2)(b) (Board Review 11) stated that his keys were clipped to his waistband, and that PO Senra unclipped them before placing them in her pocket. However, Video Clip #1, above, reveals that after the frisk, PO Senra reached into § 87(2)(b)'s left front pocket, removing his car keys. She then reached into his right pocket, which she determined to be empty.

§ 87(2)(b) and § 87(2)(b) (Board Review 10) consistently testified that neither had smoked marijuana in the vehicle, and the vehicle did not smell of marijuana.

PO Senra (Board Review 13) stated that upon approach to § 87(2)(b)'s vehicle, she smelled the odor of marijuana. (She made no mention of the odor of marijuana in any documentation pertaining to the incident). She stated further that, as discussed above, she frisked § 87(2)(b) for safety due to his suspicious and uncooperative behavior. She did not remember if, when she frisked § 87(2)(b) she felt any items in his pants pockets or on his person. However, PO Senra was also concerned that § 87(2)(b) might be carrying a flat razor blade, a weapon which she had previously encountered in the course of her police work.

PO Senra stated that after frisking § 87(2)(b) she searched him by turning his pockets out. She did not remember if the search revealed any items, including weapons or contraband, in his pockets.

During the CCRB interview, PO Senra was shown the incident video. During which, she pointed out that she felt § 87(2)(b)'s keys in his pocket while frisking him and then removed them from his pocket.

Sgt. Kosek (Board Review 12) stated, like PO Senra, that he smelled the odor of marijuana upon approach to § 87(2)(b)'s vehicle. He also stated that PO Senra pinched her nose, signaling to him that she, too, smelled the odor of marijuana. Lastly, Sgt. Kosek noted in his memo book (Board Review 15), "Marijuana emanating from the M/V [motor vehicle]."

According to People v. De Bour 40 N.Y.2d 201 (Board Review 17) an officer may only search an individual if he or she has probable cause to believe that the individual in question has committed, is committing, or is about to commit a crime.

Video Clip #1 reveals that § 87(2)(b) carried only his keys in either of his sweatpants pockets. His right pocket was empty. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

According to People v. Chestnut 43 A.D.2d 260 (Board Review 18), the odor of marijuana emanating from a vehicle provides officers with probable cause to search both a vehicle and its occupants.

§ 87(2)(g)

§ 87(2)(g)

**Allegation C—Offensive Language: Police Officer Sonya Senra made remarks to § 87(2)(b) upon the basis of the gender of § 87(2)(b)**

§ 87(2)(b) (Board Review 11) stated that while PO Senra frisked him, her hand came into contact with his groin. When he complained, she responded, “Nobody wants to touch that little piece of shit anyway.”

§ 87(2)(b) (Board Review 10) stated that when § 87(2)(b) complained about the contact, PO Senra said, “I don’t wanna touch your little thing anyway.”

PO Senra (Board Review 13) denied that she ever made this or any similar remark. Sgt. Kosek (Board Review 12) and PO Hanafi (Board Review 14), likewise, denied ever hearing PO Senra make this or any similar remark. Neither PO Garrett (Board Review 19) nor PO Schiro (Board Review 20) was on scene at this time.



2017-11-01\_18-49-14.mp4

Video Clip #2 - 15 seconds

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**CCRB Case # 201706037**

Video Clip #2, captures PO Senra's contact with § 87(2)(b)'s groin area. § 87(2)(b) PO Senra, and PO Hanafi make several statements immediately afterward, but the camera turns away and the statements are not clearly discernable. § 87(2)(g)

§ 87(2)(g)

**Allegation D—Abuse of Authority: Sergeant Joseph Kosek frisked § 87(2)(b)**

**Allegation E—Abuse of Authority: Sergeant Joseph Kosek searched § 87(2)(b)**

§ 87(2)(b) (Board Review 10) stated that when he exited the vehicle, Sgt. Kosek frisked and searched him. § 87(2)(b) (Board Review 11) made no such allegations on § 87(2)(b)'s behalf.

§ 87(2)(g)

**Allegation F—Abuse of Authority: Sergeant Joseph Kosek searched the vehicle in which**

**§ 87(2)(b) was an occupant.**

§ 87(2)(b) (Board Review 11) and § 87(2)(b) (Board Review 10) stated that Sgt. Kosek leaned into the front and back seats of the vehicle. Subsequently, either PO Senra or PO Hanafi – § 87(2)(b) did not recall which, but § 87(2)(b) identified PO Senra – also entered the vehicle, ostensibly assisting Sgt. Kosek with the search. After the officers departed, § 87(2)(b) discovered that the contents of the glove compartment had been disturbed.

Sgt. Kosek (Board Review 12) acknowledged searching the vehicle. He stated that § 87(2)(b)'s and § 87(2)(b)'s uncooperative and suspicious behavior led him to believe that they might have hidden a weapon within the vehicle. Sgt. Kosek looked under the seats from the front and from the back in order to determine whether or not this was the case. He did not open the glove compartment or any other closed container. He found no weapons.

In *People v. Mundo* 99 N.Y.2d 55 (Board Review 21), officers observed a vehicle commit a traffic violation and initiated a lawful vehicle stop, during which the subject vehicle pulled away twice. The driver then appeared to reach toward the vehicle's center console. Upon stopping the vehicle a third time, the officers removed and frisked the occupants. Subsequently, an officer performed a limited search of the area in the passenger compartment where the furtive movements had been observed. Such a search was lawful, the court found, on the basis that the occupants' suspicious and uncooperative behaviors provided the officers with reasonable grounds to conclude that a weapon located within the vehicle presented a specific danger to their safety.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) alleges here that an officer opened the glove compartment of his vehicle during the course of his search; Sgt. Kosek denied opening the glove compartment. Regardless, according to *People v. Jones* 39 A.D.3d 1169 (Board Review 22), a closed container within the passenger compartment, to which the occupants have ready access, is included within the “grabbable area,” and therefore an officer may lawfully open and inspect the contents of such a container when performing a limited protective search for weapons.

§ 87(2)(g)

**Allegation G—Abuse of Authority: An officer deleted information from § 87(2)(b)'s electronic device.**

**Allegation H—Abuse of Authority: An officer damaged § 87(2)(b)'s property.**

§ 87(2)(b) (Board Review 11) stated that when the officers' vehicle came to a stop, he began recording a video with his iPhone. He placed the phone screen-up, camera-down, on the center console to record audio of the encounter. After the officers departed, § 87(2)(b) noticed that his phone was no longer recording. Further, no video from the incident was saved on the phone, whether in the “videos” folder or the “deleted videos” folder. The phone was unlocked, so it was possible to access the “deleted videos” folder in order to permanently delete the video file.

§ 87(2)(b) also stated that he had a GPS system built into the dashboard with an antenna, designed to boost the GPS signal. The antenna was connected from the GPS to the car's battery via a cable running through the dashboard. After the officers departed, § 87(2)(b) found the antenna lying on the front passenger-side seat. When he attempted to start his vehicle, it would not start, as it was in anti-theft mode. § 87(2)(b) believed that this was because the aforementioned antenna had been removed improperly.

§ 87(2)(b) provided the investigation with a photograph of a receipt for work performed on his vehicle by a locksmith on July 15, 2017 (Board Review 23), as well as a photograph of a receipt for a new car battery, purchased July 15, 2017 at 8:53 PM (Board Review 24).

§ 87(2)(b) (Board Review 10) stated that after the vehicle search, he saw Sgt. Kosek holding § 87(2)(b)'s phone.

Sgt. Kosek (Board Review 12) denied finding a phone which was recording video or deleting information from any recording device. Further, he denied that he removed any wires or electronic accessories from the console or dash of the vehicle. He denied further that he damaged the interior of the vehicle whatsoever. Lastly, Sgt. Kosek stated that he searched the vehicle alone, and that neither PO Senra nor PO Hanafi entered the vehicle.



PO Senra (Board Review 13) and PO Hanafi (Board Review 14) denied that they assisted Sgt. Kosek in searching the vehicle. Further, they denied that they deleted information from any recording device or that they damaged any property within the vehicle. Neither PO Garrett (Board Review 19) nor PO Schiro (Board Review 20) recalled the incident.

§ 87(2)(g)

**Allegation I—Discourtesy: Police Officer Sonya Senra spoke discourteously to** § 87(2)(b)

§ 87(2)(b) did not allege that any officer referred to him as “stupid.” However, the video recorded by § 87(2)(b) captured audio of such a discourtesy.



2017-11-01\_20-01-00.mp4

Video Clip #3 - 17 seconds

Video Clip #3, above reveals the two female officers conversing with § 87(2)(b). A female voice says, "Your boy is stupid. He knows that. You know that, right?" § 87(2)(b) replies, "I hope you know I'm military, too." The same female voice which earlier referred to § 87(2)(b) as “stupid” then says, "Good, now you should know that you're stupid." Finally, the female which did not refer to § 87(2)(b) as stupid said, "You're military and that's how you treat cops? That's sad. I wouldn't even say that out loud."

It is undisputed that PO Senra and PO Hanafi were the only two females on scene. PO Senra (Board Review 13) and PO Hanafi (Board Review 14) each listened to this audio during their CCRB interviews. They each stated that they could not identify whose voice referred to § 87(2)(b) twice as “stupid.” They also each testified that they did not recall making any such remark. However, PO Hanafi confirmed that it was she who said, “You're military and that's how you treat cops? That's sad. I wouldn't even say that out loud.” Additionally, this voice is distinct from that which referred to § 87(2)(b) twice as “stupid.” § 87(2)(g)

According to NYPD Patrol Guide Procedure 203-09 (Board Review 25) officers must be courteous and respectful in their dealings with the public.

§ 87(2)(g)

**Allegation J—Abuse of Authority: Sergeant Joseph Kosek threatened to report § 87(2)(b) to a military supervisor.**

§ 87(2)(b) (Board Review 11) alleged that Sgt. Kosek said that he would report § 87(2)(b) to his military supervisor for his noncompliance. No such remark was captured in § 87(2)(b)'s video, but the recording ended before Sgt. Kosek allegedly made the remark in question.

Sgt. Kosek (Board Review 12) stated that after observing a military-style backpack in the vehicle, he asked § 87(2)(b) and § 87(2)(b) if either was a member of the military. § 87(2)(b) said that he was on active duty. Sgt. Kosek asked § 87(2)(b) if he had military identification, but § 87(2)(b) did not respond. Sgt. Kosek told § 87(2)(b) that it was an offense to wrongfully identify himself as a member of the military. However, Sgt. Kosek denied ever telling § 87(2)(b) that he could or would report § 87(2)(b) to a military supervisor.

Neither PO Senra (Board Review 13), nor PO Hanafi recalled Sgt. Kosek informing § 87(2)(b) that he could or would report him to a military supervisor, and neither PO Garrett (Board Review 19) nor PO Schiro (Board Review 20) recalled the incident.

§ 87(2)(g)

**Allegation K—Abuse of Authority: Police Officer Lena Hanafi refused to provide her name to § 87(2)(b)**

**Allegation L—Abuse of Authority: Police Officer Dominique Garrett refused to provide his name to § 87(2)(b)**

**Allegation M—Abuse of Authority: Police Officer Christopher Schiro refused to provide his name to § 87(2)(b)**

§ 87(2)(b) (Board Review 11) stated that he gestured to PO Hanafi, PO Garrett, and PO Schiro and stated that he wanted each of their names. The officers were all facing him when he made the request. However, PO Hanafi, PO Garrett, and PO Schiro did not respond.

PO Hanafi (Board Review 14) stated that she did not recall § 87(2)(b) ever requesting her name and denied that she refused to identify herself. Neither PO Garrett (Board Review 19) nor PO Schiro (Board Review 20) recalled this incident. Neither Sgt. Kosek (Board Review 12) nor PO Senra (Board Review 13) corroborated the allegation.

Patrol Guide Procedure 203-09 (Board Review 25), upon request, an officer must clearly state his or her name, rank, and shield number to any member of the public.

§ 87(2)(g)

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Squad: 1

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date